IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.08.2017

Pronounced on : 22.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.3279 of 2017
and Crl.M.P.Nos.2362 & 2363 of 2017

1.Devarajan

2.Selvam

3.Paramadhyalan

4.T.S.Munusamy

5.Chinnapillai

6.Jegannadhan

7.Loganathan

8.Janarthanan

9.Dhamotharan

10.Pushpa

11.Gajalakshmi .. Petitioners

Vs.

1.State rep. by
The Assistant Commissioner of Police,
Central Crime Branch,
EDF-II, Vepery, Chennai.

2.N.R.Vatchla

3.Thirunavukarasu .. Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for all the records and to quash all the proceedings in C.C.No.7142 of 2016 on the file of the learned Metropolitan Magistrate CCB-CBCID, Egmore at Allikulam, Chennai, in Crime No.42 of 2014 on the file of the Inspector of Police, Central Crime Branch, Chennai.

For Petitioners	:	Mr.P.Kumaresan
For Respondent-1	:	Mr.P.Govindarajan Additional Public Prosecutor
For Respondent Nos.2 & 3	:	Mr.S.Sridhar

ORDER

The present petition has been filed to quash the proceedings in C.C.No.7142 of 2016 against the petitioners charged for the offences under Sections 406, 408, 420, 120(B) r/w.34, 109 and 506(i) IPC pending before the learned Metropolitan Magistrate, CCB- CBCID, Egmore at Allikulam, Chennai.

2.The brief facts of the prosecution is as follows:

The petitioners 1 & 2 along with one V.A.Kumaresan, who died subsequently, had entered into a Memorandum of Understanding dated 30.09.1988 with the defacto complainant/second respondent and two others. The said Memorandum of Understanding was for the purpose of development of the lands comprised in Survey Nos.927/1, 921/1, 918/1, 918/2, 923/2, 923/1, 922, 918/1, 899, 920 and 925 measuring about 14.51 acres, which was duly owned by Mr.Sevugan Chettiar and six others who were the partners of M/s.Vinayaga Brick Works. The defacto complainant and two others had already entered into an agreement with the partners of M/s.Vinayaga Brick works for sale of the subject property and the possession was also handed over to them. As per clauses of the Memorandum of Understanding, the petitioners had agreed to finance a housing project in Korattur Village, Saidapet Taluk, Chengalpet District and where required to pay a sum of Rs.15 lakhs to the defacto complainant or to the owners of the land as the case may be and the petitioners had further agreed to advance another sum of Rs.5,00,000/- for further development of the said project. In turn, the defacto complainant had agreed to sell 100 grounds to the petitioners herein at the rate of Rs.55,000/- per ground. In consideration of the payments made, the defacto complainant had agreed to execute sale deed in favour of 10 persons out of which six will be selected by the petitioners herein. Based on the understanding, the petitioners have paid a sum of Rs.55 lakhs to the defacto complainant and sale deeds were executed to the petitioners 3 to 11 herein in the year 1988. Subsequently, the petitioners 2 to 10 herein had sold their respective plots to the first petitioner in the year 2000 and thus, the first petitioner became the absolute owner of the property. The third respondent herein is the power agent of the second respondent/defacto complainant. According to the respondents 2 & 3, the Memorandum of Understanding dated 30.09.1988 was only for the purpose of financial assistance and as per the clauses in the said Memorandum of Understanding, the first and second accused were required to pay a sum of Rs.55 lakhs to the defacto complainant for purchase of the plots. According to the second respondent, the petitioners/accused 1 and 2 had entered into another sale agreement with one Marimuthu dated 09.06.1989 and executed 10 sale deeds in October 1988, the same amounts to offence of cheating and criminal conspiracy by creating forged documents. Hence, the respondents 2 and 3 had filed a petition in Crl.M.P.7320 of 2013 before the learned Chief Metropolitan Magistrate, Egmore, Chennai under Section 156 (3) of the Code of Criminal Procedure seeking for registration of a complaint and by order dated 29.10.2013, the said complaint came to be registered in Cr.No.42 of 2013 under Section 406, 420, 506(i) IPC which culminated into C.C.No.7142 of 2016.

3.Mr.P.Kumaresan, learned counsel for the petitioners submitted that the issue in hand is purely civil in nature and that the sale deeds executed in the year 1988 and 2000 have not been challenged by these respondents till date. Furthermore, the learned counsel submitted that filing of a petition under Section 156 (3) by two de-facto complainants is barred in law in view of various well laid down judgments. The learned counsel further submitted that the averments in the complaint as well as the 161 statements of the witnesses does not constitute an offence of cheating and hence, the impugned proceedings is liable to be quashed. In any event, the complaint has been made after huge lapse of 26 years and on this ground also the proceedings are liable to be quashed.

4.The learned counsel for the respondents 2 & 3 on the other hand submitted that the subject lands were under the proceedings of the Urban Land Ceiling Act and as per the understanding between the parties, it took considerable time for releasing the land from the ceiling proceedings and therefore, there was no delay. Further, it was submitted that the subject properties were given only as a security. The learned counsel also submitted that the petitioners herein had made payment only to the defacto complainant and there is no document to show that the amounts were paid to the original owners of the particular lands.

5.Mr.P.Govindarajan, learned Additional Public Prosecutor submitted that out of Rs.55 lakhs agreed, the petitioners had only paid Rs.15 lakhs and the remaining Rs.40 lakhs has been cheated. The learned Additional Public Prosecutor relying upon the 161 Cr.P.C., statements submitted that sufficient materials were available for investigation and based on these materials, charges have been properly laid. He further submitted that all the grounds raised by the petitioners can be raised during the time of trial and therefore sought 'for dismissal' of the present petition.

6.I have given careful consideration to the submissions made by the respective counsels.

7.Before going into the contentions put forth by the respective counsels, it is a fact that the dispute pertains to certain cause of actions that arose in the year 1988, which is now being given life by way of a complaint registered under the orders of a criminal Court made under Section 156 (3) Cr.P.C. The only reasoning of the respondents 2 & 3 with regard to this delay is due to the legal proceedings initiated for releasing the subject lands from the land ceiling proceedings. There is no material available either before this Court or during the course of investigation to establish that the delay for filing a criminal complaint against these petitioners was due to the steps taken by the respondents 2 and 3 for releasing the lands from the land ceiling proceedings. Even otherwise, I am unable to comprehend as to how the alleged initiation of proceedings to release the subject lands from land ceiling could be an impediment for initiating criminal proceedings in time.

8.Incidentally, the respondents 2 and 3 herein are not the owners of the land. The second respondent claims to be an agreement owner with the original owners of the property who are the partners of M/s.Vinayaga Brick Works and the third respondent claims to be a power agent of the second respondent. Though the petitioners 1 and 2 have been described to be 'financers' in the Memorandum of Understanding dated 30.09.1988, from the recitals of the said Memorandum of understanding, it is seen that there was a clear understanding between the parties that the petitioners 1 & 2 were entitled to execute sale deeds to atleast 10 persons. Pursuant to this agreement, the sale deeds came to be executed in favour of the petitioners 2 to 11 herein and I do not see any contravention of the clauses in the Memorandum of Understanding dated 30.09.1988. If at all, the respondents 2 and 3 claim that the first petitioner had violated the terms of the Memorandum of Understanding, it is purely a dispute which is civil in nature and the police have no authority to take cognizance of such disputed facts. Though the charge sheet has been laid, the complaint and the statements of the witnesses clearly discloses a civil dispute between the parties, it would not be proper to allow the petitioners herein to subject themselves to rigmaroles of criminal prosecution.

9.As pointed out by the learned counsel for the petitioners, the respondents 2 & 3 herein had jointly filed the petition under Section 156 (3) Cr.P.C., before the learned Chief Metropolitan Magistrate, Egmore, Chennai. As observed earlier, the third respondent is a power agent of the second respondent. When the second respondent had chosen to file this private complaint under Section 156 (3) of Cr.P.C., there was no necessity for the third respondent to join as a petitioner in the complaint. As a matter of fact, this raises a serious doubt as to whether the third respondent who claims to be the power agent of the second respondent has initiated this proceedings with an ulterior motive. In any event, the second respondent was never the owner of the subject lands and from a perusal of the sale deed executed by the owners of the land to the petitioners 2 to 11 herein, it is seen that the same has been done for a valid sale consideration and pursuant to the powers vested with the petitioners 1 and 2 under the Memorandum of Understanding dated 30.09.1988. As pointed out by the learned counsel for the petitioners, filing of a complaint by two complainants out of which even if one is a power agent, the complaint is not maintainable.

10.The aforesaid proposition is supported by a judgment of this Court reported in ***Maheswari and others Vs. Jayanthi and another in 2011 (4) MLJ (Crl.) 198***. The relevant portion of the said judgment is as follows:

> *"14.Section 200 of the Code of Criminal Procedure contemplates examination of the complainant. A Magistrate taking cognizance of an offence on complaint shall examine on oath the complainant. If there are more than one complaint, it will be difficult for the Magistrate to form an opinion for taking cognizance of an offence. This applies to the power of attorney of two complaints also. Therefore, the joint complaint given by two persons is not maintainable and liable to be quashed."*

This aspect has again been reiterated in the following judgments:

1)***Swami @ Ramakrishnan Vs. State rep. by the Inspector of Police, G2, Puthumanthu Police Station, Nilgiris***

District in 2010 (3) MLJ (Crl.) 284 and the relevant portion is as follows:

> *"20.Before parting with the case, it is relevant to point that in this case a joint complaint is given by the Panchayatars which is unknown to the criminal procedure. This court in the case of Thethavusamy Vs. Radhakrishnan [2007-2-Crimes-166-Madras] has held that the complaint made by two persons jointly in respect of one and the same occurrence is not valid in law. In this case, the complaint is preferred jointly by Panchayatars on 16.2.2000 which has been referred to All Women Police Station and registered as petition No.50/2000. Only thereafter, a statement has been recorded from the prosecutrix on 3.3.2000. This statement was recorded after the commencement of the investigation and therefore hit by Section 162 of Code of Criminal Procedure and the entire investigation conducted based on a joint complaint cannot be a valid one."*

2)In ***M.Ravi Vs. R.Palani Subramanian, P.Gnanasekaran & Punitha Gnanasekaran*** reported in ***2010 (1) LW Crl. 16***, where this Court has held as under:

"5.I have given my thoughtful consideration to the rival submissions made with reference to the materials available on record.

Admittedly, a single complaint has been given by three different persons on the ground that the occurrence took place between 06.02.2009 and 09.02.2009 over purchase and possession of a Flat in which all of them were subjected to harassment at the hands of the accused including the petitioner herein. If that be so, different complaints for the alleged acts against each individual would have been filed and the court also would have been requested to take all those complaints for joint trial. Repeatedly, such practice of filing joint complaint has been deprecated by the Apex Court as well as this Court."

In view of the above judgments, the basis for initiating the complaint itself cannot be sustained and consequently, the framing of charges is deemed to be illegal.

11.The other aspect as to whether the ingredients of the complaint constitute the offence of cheating or not is concerned, the second and third respondents in their petition before the learned Magistrate under Section 156 (3) Cr.P.C., have stated that the first petitioner herein has agreed to pay a sum of Rs.55 lakhs to the second respondent herein but as per the terms of Memorandum of Understanding, has paid a sum of Rs.15 lakhs and failed to pay the balance of Rs.40 lakhs. It is further stated therein that the respondents 2 & 3 have paid the entire sale consideration to the original owners of the subject property and therefore, the first petitioner was not justified in selling the lands to third party.

12.The Memorandum of Understanding entered into between the petitioners 1 & 2 with the second respondent and two others is a contract. What is now complained in these criminal proceedings, is that there is breach of contract between the parties. In my view, a breach of contract cannot give raise to a criminal cause of action and it is for the civil Courts to decide as to whether there was a breach of the terms of such a contract. Apparently, the disputed complaint is purely civil in nature and the criminal Court by no stretch of imagination can go into these disputed question of facts. The Hon'ble Apex Court in the judgment reported in ***International Advanced Research Centre for Powder Metallurgy and new materials (ARCI) & others Vs. Nimra Cerglass Technics (P)***

Ltd. & another in 2016 (2) LW (Crl.) 63 has held as follows:

> *"14. Distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In S.W. Palanitkar & Ors. vs. State of Bihar & Anr. (2002) 1 SCC 241, this Court held as under:*
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> > *"21 ……In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the*

inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating." The above view in Palanitkar's case was referred to and followed in *Rashmi Jain vs. State of Uttar Pradesh & Anr.* (2014) 13 SCC 553.

20. By analysis of terms and conditions of the agreement between the parties, the dispute between the parties appears to be purely of civil nature. It is settled legal proposition that criminal liability should not be imposed in disputes of civil nature. In Anil Mahajan vs. Bhor Industries Ltd. & Anr. (2005) 10 SCC 228, this Court held as under:-

"6. ……..A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The

subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

7. …..

8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay…. We need not go into the question of the difference of the amounts mentioned in the complaint which *is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question."*

21.In M/s Indian Oil Corporation vs. NEPC India Ltd. & Ors., (2006) 6 SCC 736, this court observed that civil liability cannot be converted into criminal liability and held as under:-

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such

a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. (2000) 2 SCC 636 this Court observed: (SCC p. 643, para 8) "It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of *which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."*

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or *ulterior motives on the part of the complainant. Be that as it may.""*

The aforesaid findings of the Hon'ble Apex Court is self explanatory to come to the conclusion that the criminal complaint, which is now pending, does not manifestly constitute the criminal offence of cheating and is purely a civil dispute to which, criminal jurisdiction is ousted.

13.Now that, I have held that the allegations leading to the criminal prosecution prima facie does not disclose or constitute the offence of cheating, there would be no justification to compel the petitioners to undergo the rigmaroles of criminal prosecution. This Court is well within its powers under Section 482 Cr.P.C., to prevent such abuse of process of law. In the judgment reported in ***in Rishipal Singh Vs. State of Uttar Pradesh and another in 2014 (7) SCC 215***, the Hon'ble Apex Court held as follows:

11.This Court in Medchl Chemicals & Pharma (P) Ltd. v Biological E. Ltd and Others 2000 (3) SCC 269, has discussed at length about the scope and ambit while exercising power under Section 482 Cr.P.C. and how *cautious and careful the approach of the Courts should be. We deem it apt to extract the relevant portion from that judgement, which reads:*

"Exercise of jurisdiction under inherent power as envisaged in Section 482 of the Code to have the complaint or the charge sheet quashed is an exception rather than rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution with the lodgement of First Information Report. The ball is set to roll and thenceforth the law takes it's own course and the investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and it's undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the fact of it does not constitute or disclose any offence alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situations as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal

process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount".

14.It would not be out of place to mention here nothing prevented the respondents 2 & 3 to take steps for cancellation of the sale deeds executed in favour of the petitioners or for a specific performance of the terms of the Memorandum of Understanding dated 30.09.1988. In view of the failure to initiate civil proceedings within the limitation period, it can only be concluded that the criminal proceedings have been initiated with an ulterior motive of coercing the petitioners for an illegal gain. In the background of the conduct of the respondents 2 & 3, I have no hesitation to hold that the proceedings in C.C.No.7142 of 2016 is an abuse of process of law.

15.In the result, the Criminal Original Petition stands allowed. Consequently, the proceedings in C.C.No.7142 of 2016 on the file of the learned Metropolitan Magistrate, CCB-CBCID, Egmore at Allikulam, Chennai stands quashed. Consequently, connected Miscellaneous Petitions are closed.

22.09.2017

Index:Yes/No
Internet:Yes/No
DP

To

1.The Metropolitan Magistrate
CCB-CBCID, Egmore at Allikulam,
Chennai.

2.The Assistant Commissioner of Police,
Central Crime Branch,
EDF-II, Vepery,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

M.S.RAMESH.J,

DP

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